

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKEY ANDRE HOPSON,

Defendant-Appellant.

UNPUBLISHED
November 2, 2001

No. 225652
Berrien Circuit Court
LC No. 99-403230-FC

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to possess with intent to deliver 225 grams or more but less than 650 grams of cocaine, MCL 333.7401(1)(ii) and MCL 750.157a, and furnishing false identity information to the police, MCL 257.324(1)(h). He was sentenced as a fourth-offense habitual offender, MCL 769.12, to twenty to fifty years' imprisonment for the conspiracy conviction and ninety days' incarceration for the furnishing false identity information conviction. He appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence to find him guilty of conspiracy. In determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences may be sufficient to prove the elements of a crime. *Id.* at 526.

To be convicted of conspiracy to possess with intent to deliver a controlled substance, the prosecution must prove: (1) defendant possessed the specific intent to deliver the statutory minimum as charged; (2) the coconspirators possessed the specific intent to deliver the statutory minimum as charged; and (3) defendant and his coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997). Conspiracy is a partnership in criminal purposes and under the partnership, two or more people must voluntarily agree to effectuate the commission of a criminal offense. *Id.* at 345. The essence of the offense lies in the unlawful agreement because the crime is complete upon the formation of the agreement. *Id.* at 345-346.

Taken in a light most favorable to the prosecution, the evidence adduced at trial indicated that at approximately 5:15 a.m. on July 16, 1999, three vehicles were traveling very close together on I-94. Michigan State Police Troopers James Coleman and Michael Troutt were parked in the median of the expressway and noted that the three vehicles were within one car length of each other. Because the vehicles were traveling at about seventy miles an hour, the state troopers followed them because the vehicles were traveling too close together at that rate of speed and traffic was otherwise very light. The state troopers followed the vehicles for about six miles and noted that the vehicles were clearly traveling in a caravan because the second and third vehicles closely mimicked the lead vehicle's moves regarding lane changes and speed variations.

Trooper Coleman then positioned his patrol vehicle between the first two vehicles and activated the lights. The first vehicle pulled over, but the second vehicle had to be cut off by the troopers before it pulled over. The third vehicle was stopped by a Benton Township Police Officer. Trooper Coleman approached the first vehicle, in which defendant was the driver and there was a passenger (who initially gave a false identification and was later identified as William Powers). Defendant did not have a driver's license or any other identification and identified himself as "Dion Bruessard." Defendant told Trooper Coleman that they were traveling to Benton Harbor to meet some women; however, the passenger indicated that they were traveling to Cedar Point for a family reunion. Trooper Troutt talked with the driver of the second vehicle, James Thomas, who claimed that he had been in Chicago and was on his way back to Detroit when he met the people in the other two vehicles at a welcome center in New Buffalo and they invited him to go to Kalamazoo. Thomas then consented to a search of his vehicle and Trooper Troutt found a white plastic bag in the trunk containing 590 grams of cocaine.

The third vehicle, stopped by Benton Harbor Police Officer Tom Vaught, also contained only one person, Ralph Washington, who did not have a driver's license. Washington claimed that he was not traveling with the other two vehicles and that he was driving from Chicago to Kalamazoo.

There was also testimony about the relationship between the four men. Powers' girlfriend, Sharita Hegler, testified that on July 15, 1999, Powers borrowed her vehicle to visit his sick grandmother in Chicago. At the time of the stop, Hegler's vehicle was that being driven by Washington. Hegler testified that Powers and Washington are cousins and that Powers and defendant are friends.

Michigan State Police Detective Sergeant Willie Mays interviewed defendant. Defendant initially stated that he did not know Thomas or Washington. However, defendant later stated that Powers had borrowed defendant's mother's vehicle in Chicago to drive to Kalamazoo and defendant was following Powers when Powers pulled off at a rest stop in New Buffalo. At that point, defendant began to drive his mother's vehicle, the lead vehicle. Defendant denied any knowledge of the cocaine found in Thomas' vehicle; however, defendant admitted that he did deal drugs, although Powers was the only person who had the "weight" to get 590 grams of cocaine.

Detective Sergeant Mays also provided expert testimony in the area of sales and distribution of cocaine. Detective Sergeant Mays specifically testified that a caravan is two or

more vehicles traveling together when transporting drugs and that the purpose is to protect against robbery. The vehicles also divert police attention from the vehicle actually transporting the drugs, such as by swerving in a lane to be pulled over for a traffic ticket.

Defendant testified in his own behalf at trial and denied that he had any knowledge of the cocaine. He acknowledged that he and Powers were friends and further testified that Powers picked up defendant at his grandmother's house in Chicago and brought Thomas and Washington with him. Defendant gave conflicting testimony regarding his knowledge of Thomas and Washington, stating both that he knew and did not know them. Defendant maintained that he was not aware of the cocaine, although he admitted that he knew that Powers was a drug dealer.

Viewing this evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to support defendant's conspiracy conviction. Contrary to defendant's argument, direct proof of the conspiracy is not necessary. *Id.* at 347. Rather, "proof may be derived from the circumstances, acts, and conduct of the parties." *Id.* Here, the conspiracy was shown by the fact that the three vehicles were being driven in a caravan, that defendant knew Powers well and knew that he was a drug dealer, that defendant also knew Thomas and Washington, that the men gave false identification information to the police, and that the men gave conflicting statements about the purposes of their trips. Further, the police found a substantial quantity of cocaine in the trunk of the middle vehicle with a street value of about \$100,000. Under these circumstances, the jury could reasonably infer that defendant conspired with others to transport with the intent to later distribute the cocaine.

Defendant next argues that the trial court abused its discretion in admitting hearsay statements of Washington, Powers, and Thomas. The decision to admit evidence is within the trial court's discretion and will be reversed only where there is an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Where the decision regarding the admission of evidence involves whether a rule of evidence or statute precludes such admissibility, the question is one of law and is reviewed de novo. *Id.*

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. MRE 801(c). Hearsay is inadmissible unless it falls within one of the exceptions. MRE 802. MRE 801(d)(2)(E) provides that a statement is not hearsay if the statement is offered against a party and is a statement by a coconspirator of a party during the course of and in furtherance of the conspiracy on independent proof of the conspiracy.

The statements, giving false identifications and regarding the nature of their travels and that they did not know each other, were admitted at trial through the testimony of the three police officers involved in stopping the three vehicles. The trial court's decision to allow the statements was ultimately premised on two reasons: (1) that the statements did not constitute hearsay because they were not offered for the truth of the matter asserted, and (2) that the statements were not hearsay under MRE 801(d)(2)(E) as statements made by coconspirators made during and in furtherance of the conspiracy. We agree that the statements did not constitute hearsay as defined in MRE 801(c), therefore, we need not determine whether MRE 801(d)(2)(E) is applicable.

Here, the statements given by Washington, Powers, and Thomas to the police officers were of their identities (which were false), the nature of their trip, and that they were not

traveling together or did not know each other. The statements were not offered in evidence to prove the truth of the matter asserted by the three men. Rather, the statements were offered to prove the conspiracy. Because the men gave false identities, gave inconsistent reasons for the nature of their travels, and claimed not to know each other, this evidence tends to show that the men were lying to cover the real purpose of their trip because 590 grams of cocaine was found in the trunk of the second vehicle and because there was later testimony clearly linking the four men. Accordingly, the statements were not hearsay because they were not admitted to prove the truth of the matter asserted, but were offered to prove the conspiracy.

The trial court did not abuse its discretion in admitting the statements made by Washington, Powers, and Thomas because the statements were not hearsay.

Affirmed.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell